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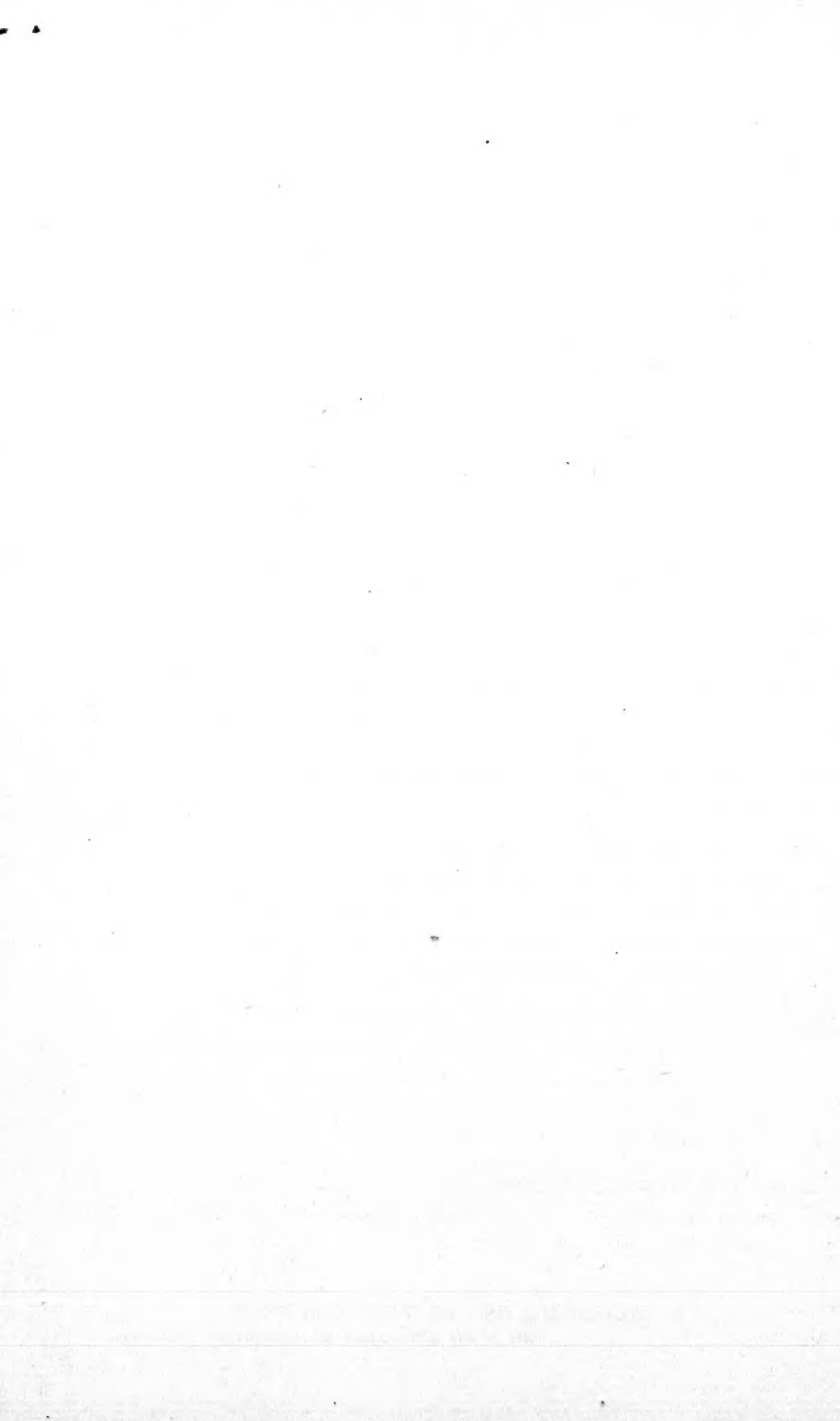
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LETTERS

TO A

LAW STUDENT.

BY

JUNIUS JESSEL BURKE,

Of Osgoode Hall, Barrister-at-Law.

"Carpe diem * * *"

Q. H. FLACCUS.

TORONTO:

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PREFATORY.

Before making up my mind to publish the enclosed, I submitted the manuscript to a very learned friend. A few days afterwards I had the pleasure of receiving back my letters with the following testimonial endorsed thereon: "*Re Burke and Coke*—Tax a fee of \$50 to Mr. Burke on the within.—R. G. D."

I think my readers will agree that a commendatory opinion, expressed in language so concise, yet elegant, and to the point withal, was sufficient to induce me to publish the letters which I wrote to my young friend COKE-UPON-LITTLETON.

J. J. B.

LETTERS TO A LAW STUDENT.

I.

MY DEAR COKE-UPON-LITTLETON :

You are thinking of studying the law. Well, I have a few friendly words to offer for your consideration. If your aim be to become a lawyer in the full sense of the term, your task is no light one. You are devoting yourself to a life of hard work, and never ending study. It is otherwise if you merely desire to become a member of the legal profession. Any man of ordinary parts who makes the same effort to succeed in law as he would make in any other pursuit, will get on. He may become Solicitor, Barrister and even Queen's Counsel without becoming a lawyer. I tell you, sir, that all the *lawyers* in this country could muster on a place much smaller than the Plains of Abraham. Keep the distinction well before your mind. If you desire to become a lawyer you have a career of untiring application and industry to face. You must possess or succeed in acquiring what is called the "legal mind," or the faculty of being able to trace

legal distinctions. Until you possess this qualification it is almost self-evident you cannot be considered a lawyer. Now this "legal mind" is generally only acquired after undergoing a thorough legal training. It is not an inborn talent, as is said of the poetic mind, "*poeta nascitur non fit.*" Poetry and law are wide apart; and although the poetic talent may be intuitive there is no reason to suppose that the legal talent is so. Natural ability no doubt is useful in every walk of life, mechanical and professional, but it amounts to very little if it be not developed and expanded by artificial means. In the history of English law you will find that the eminent lawyers of the past and present elevated themselves by means of their untiring zeal in the study and practice of their profession. As a general rule true genius, in any sphere of life, is but another name for hard work; and of no profession is this more true than the profession of law. Your desire to become a lawyer can only be realized by a thorough consciousness of this fact. My first advice, therefore, is that you enter upon your calling with a fixed determination to stand hard work. Without hard work there can be no success.

II.

If it be in your power to do so I would recommend you to enter into a well established office wherein the practice is of a general nature. In these days a lawyer requires to have a knowledge of all branches of legal work. Very few men can hope to succeed by specialty work in a new country such as ours. Choose an office, therefore, in which there is a steady practice going on in the Common Law and Equity Courts.

Having entered a suitable office, your next object should be to make yourself useful in the business as soon as possible. Of course for the first year or so you cannot expect to go beyond routine, but even in this you will find always something to learn.

Let your aim be to acquire a proper method in your performance of office duties. After you have emerged from mere routine to work of a higher nature your purpose should be to take upon yourself as much of the responsibility of the office as your position will admit. By being thus thrown more and more upon your own resources any latent powers you have will be developed and you will at the same time school yourself in that discipline of self-reliance without which you cannot hope to face the duties of an active professional life. Now, you must begin your study of your profession on the very first day you enter an

office. Everything will be vague and difficult at first, but you must study the business right from the beginning of your articles. A practical knowledge cannot be obtained from books alone nor yet without books. The application of principles can only be learned in actual practice. Your endeavor, therefore, should be to apply your reading to the business which you will see going on in the office. *Connect your reading with the practice in the office.* This is the golden rule for gaining a practical knowledge of your profession, and in my opinion, it is almost impossible to overrate its importance. If the practice be in equity or common law litigation, strive to understand the principles which govern these matters by reference to your equity or common law text books. So with regard to conveyancing and actions to try a right to land, let your aim be to understand these things by the light of your reading in real property law. You will, of course, find it difficult to do so with any marked success at first. The practice may be above your reading at the time, but this should not deter you from getting at the bottom of as many points as you can.

The simplest transaction that takes place in the office practice has some object and should put you upon enquiry. If you are only transcribing a deed or lease of land it is of importance that you strive to comprehend its legal effect. The words of conveyance—the different recitals or premises—the clauses and conditions—their use and signification—all these

afford matters of intelligent study to the student who would master his profession. So in the conduct or defence of an action it becomes your duty to understand why the pleadings are drawn thus—why the suit is thus prosecuted and thus defended—why this or that form of procedure should be adopted. Do not attempt, however, to grasp at the full knowledge of each of these matters as it arises—that were impossible—but endeavor to master as much as possible under the circumstances. By so doing you will be daily adding to your stock of practical knowledge, and after a time you will be surprised to note the clearness with which you can comprehend what was, in the beginning, of a difficult aspect.



III.

As to your course of reading I may say that the list of books framed from time to time for the examinations at Osgoode Hall, furnishes the names of the works which are calculated to convey a fair elementary knowledge of our law. There are no useless books on the curriculum—they all contain useful information for the student. But apart from your examination studies I would advise you to read from time to time as many works of the leading text writers as your time will permit. I cannot too strongly recommend to you to study thoroughly Blackstone's Commentaries on the Laws of England, and Story's Treatise on Equity Jurisprudence. These books should be taken up by every student at the very beginning of his studies, and should be read and re-read until the main principles are thoroughly mastered. I tell you, sir, that you never can know Blackstone or Story too well. Many propositions and doctrines contained in the commentaries have no doubt been discarded, or overruled, or altered by legislation, but in the main Blackstone's law is in full force and vigor. As to the Treatise on Equity Jurisprudence, you can safely adopt almost every principle laid down by Judge Story in his admirable work. There has been practically hardly any judicial or legislative altera-

tion made regarding the doctrines of equity as expounded by the great American jurist. When you have read the commentaries and the equity treatise, you will have obtained a comprehensive survey of our whole jurisprudence. These works practically cover the whole domain of English law. Besides these I would also recommend you to read the annotated editions of Smith's Leading Common Law Cases, and Tudor's Leading Cases in Real Property. This reading properly belongs to your final year, and if pursued attentively, will serve as a sort of relaxation from your examination work. The leading cases will not only instruct you as to the fundamental principles of the law, but the reading of them will educate you in the art of tracing legal distinctions, and thus prepare you to take part in the debates incident to your profession.



IV.

As to the method to be pursued in your reading I have a few observations to make. I would advise you to read each text book for the first time without taking notes. The first reading should be employed in gaining a general notion of the subject and of its branches. And when you read your book the second time you will understand its scheme or plan, and thus be enabled to study in an intelligent manner. In your second reading take very full notes of everything that you understand. In regard to definitions they should be copied verbatim. Take for instance the definitions of "rent," "promissory note," and "deed." These are generally expressed so clearly and concisely by the text writers that it is better to adopt them verbatim than to express them by any other form of words. They should not only be accurately copied, but they should be committed to memory. But, excepting definitions, your notes of your reading should be in your own language. It is not useful to transcribe from the book. Do not, then, be a mere copyist as regards note taking. Express the different points concisely in your own words, and the very effort of doing this will test your knowledge of the various matters and fix them on your memory.

Some students prefer to dispense with notes and consider that the memory is better exercised when the

studies are thrown entirely upon it by the reading alone; but this is a mistaken notion. The practice of taking notes is useful, because the impression by writing added to the impression by reading is sure to fix the subject matter on the mind in an enduring manner. And when I speak of note taking, I refer to its being done with this enduring retention in view. You will find it an interesting and profitable exercise to attempt, now and then, to write a summary of a few hours' reading, after closing your book. By so doing you will test your powers of memory and your ability to digest what you read.

You will have noticed that I recommended you to *take notes only of what you understand* in your reading. This qualification is most important. You must of necessity from time to time meet with many things in your studies above your immediate comprehension. Now as to these matters you should rest content with the reading, and refrain from note taking, and the reason I say this is because I think it is much more desirable that you should have no impression at all on a given point than run the risk of receiving a wrong impression. In law it is better to have no idea than to have a false idea. Experience will teach you the force of this.

V.

Let me caution you, my dear Coke-upon-Littleton, against looking invariably for logical sequence in our law. There can be no doubt that the art of logic is of much help in a general way, but you will be led into many doubts and difficulties if you seek for the logical element in all conclusions at which you arrive in your reading. A student just fresh from his academic course is too apt to expect a logical exactness and a mathematical precision which our jurisprudence does not afford.

The English law is a compound law, pretty much as the English language is a compound language ; and it presents many anomalies and incongruities. It lacks the coherence and harmony which are to be observed in the Civil law, but at the same time the English law presents many beauties not to be observed in any of the continental systems of jurisprudence. But logic is not one of the characteristic beauties of British law, whatever other particular charms it may boast. Do not, my dear friend, attempt to test every principle by the ordinary rules of reasoning. A conclusion may be perfectly legal and yet not be perfectly logical. In other words, what is very bad logic may be very good law. Remember this.

You must guard yourself, moreover, against assuming that a conclusion must be wrong because it involves a paradox. Quite recently in England a learned Chancery Judge, in arriving at a decision upon the construction of a will, held that the testator's daughter would be entitled to a certain fund absolutely *if she should die* without leaving issue. It being elementary common sense that a dead person can take nothing and can inherit nothing, you might naturally suppose that the testator's daughter could not, by dissolution, better her circumstances in this world. But it seems that on some occasions it may be otherwise. If the Judge were Irish we should call this decision "an Irish bull;" but being an Englishman, we call it "a paradox."

Never allow yourself to fall into the error of supposing that a particular point of law has been more or less force in proportion to your ability to understand its origin. There are very many propositions in our jurisprudence which it would be difficult to find a reason for, but which nevertheless are fully as binding as those the origin of which is quite clear. Now when you come upon conundrums of this nature, my advice to you is this: When once you have satisfied yourself that you understand the legal effect of given propositions, you can generally rest satisfied and not overtax your mind with burdensome enquiries into the reason of them. Just take them as they are and waste no time over them.

I would also have you guard yourself against confounding the illustration of a principle, with the principle itself; many students take the illustration literally instead of looking at the principle involved. A condition, which declares that in case a devisee marry a Scotchman her estate shall pass over to another person, is perfectly good, according to decided cases. But you are not therefore to assume that our law discriminates against Scotchmen. In this country a Scotchman has the same rights as any other man provided he behave himself.



VI.

As to the difficulties you will meet in your studies, you must always remember that your profession is by no means an easy one to master even in theory. When you are in doubt as to the meaning of a particular passage the best way is to consult some legal friend. In nine cases out of ten this is much more satisfactory, than to strive to clear up the difficulty by your own effort. In any event, I would advise you not to strive to master each page or chapter of your book as a *sine qua non* to your going on to the page or chapter which follows. It is often impossible to do so. If, after giving a reasonable amount of attention to the matter in hand, you still fail to understand it then, I say, *pass it by* for the time being, and proceed to what follows. It is much better to allow the page or chapter to rest for the present than to waste valuable hours in trying to decipher its meaning. The time is generally much better employed in going forward, and generally the subject is cleared up and explained by the subsequent reading. It is also a very wise thing to refer to the authority which is cited in support of an obscure passage. By doing this all vagueness in the text may be cleared up. In the more elementary works, designed for the use of students, a great many propositions must necessarily be

compressed within a narrow compass ; and the law is therefore often laid down in such general terms or in so concise a manner that it must be often difficult to comprehend it. But all text books of English law, howsoever elementary they may be, contain a reference to authority in support of every main position. You will be referred to some other text writer or to some decided case. Upon consulting that particular text writer his language on the particular matter may be so perspicuous that your doubt is at once removed. Or perhaps by referring to the report of the decided case in point you may find that it contains a plain exposition of the question which was in doubt, and it may so illustrate the same by its particular circumstances as to impress its principle upon your memory in a lasting manner. As a general rule the average text book is merely a well arranged digest of cases or a compendium of principles derived thence, the full meaning and effect of which cannot be seen without referring to their originals.

Every text book should be read thoroughly. No superficial reading will avail. Aim at acquiring a knowledge of the subjects more with a view of adding to your stock of law for use in after professional life than for the purpose of a mere temporary success in your examination. Read every book therefore with the primary object of qualifying yourself to perform the duties required in your profession. Your success at the Osgoode Hall examinations should be considered secondary. If you consider the matter rightly

you will treat your studies up to your final examination, as merely preliminary to the real study of your profession. Until you enter upon the actual duties of your professional life on your own responsibility, you cannot expect to have implicit confidence in your knowledge. A really solid acquaintance with the law is only acquired from actual experience in the conduct of a law office. It is then that the theories you have studied are developed, and the *real* study of the law is proceeded with. Let the success which attends you upon your examinations at the Hall be brilliant, but that which you achieve afterwards in actual practice will altogether depend on the completeness and thoroughness with which you retain what you have studied, and upon your ability to apply that knowledge in a practical way to every day concerns.



VII.

Let me impress upon you the importance of your acquiring a thorough knowledge of the law relating to procedure, familiarly known as "practice" law. Most of law students underrate its value. Do not fall into this mistake. No lawyer can reasonably expect to make progress in his business until he has made himself familiar with this branch of learning. Therefore I advise you to begin right from the beginning of your studentship and keep right on to the end studying the rules of procedure contemporaneously with your other studies. Sometimes a knowledge of a point of mere practice becomes of great moment to the practitioner. For instance, the question of trial by jury or without a jury, is often settled by mere practice rules. Yet the appropriate tribunal for the trial of a particular case is a matter of substantial importance. Then again, as regards the question of costs, the solicitor who is ignorant of practice law must always be at a disadvantage in conducting his proceedings, because the expense of every slip he makes will generally be saddled upon himself or upon his client. Many similar illustrations could be furnished to shew you how advisable it is for you to study procedure. Make the same effort to acquire a knowledge of practice law as you would make in the study of the other branches. Take

notes of every new point as it arises. Keep a special book for that purpose.

The art of drawing pleadings is one in which every good lawyer should be proficient, though I regret to say that it seems in a fair way of becoming one of the lost arts. The rules of pleading under the Judicature Acts have done away with almost all technicalities of *form* belonging to the old procedure, but the *substance* of pleading remains exactly as it was before the Acts. After you begin to fairly understand general principles, say in your third year, you should try your hand at drafting. Of course, your first attempts will be rather crude and demurrable, but you will improve by degrees in proportion to your practice. To be a good draughtsman you must first be a good lawyer; and therefore you cannot hope to master the art during your term of office service. Until you know the law from practical experience, and not merely from books, you cannot have full confidence in your ability as a pleader. The grand and fundamental rule for pleading as well as advising is, "*First learn the facts, then apply the law.*" But unless you have a good knowledge of law it will be almost impossible to make a useful enquiry into the facts. Although you cannot expect, therefore, to become an expert draughtsman as regards the substance of your pleading until after considerable experience and practice, you should in the meantime perfect yourself in the accomplishment of being able to state your case concisely and with clearness.

VIII.

You will derive great advantage from attending the trial sittings of the High Courts. But to derive instruction, you must endeavour to follow the proceedings intelligently. Try and understand the issues in each case. No doubt you will be in a labyrinth at first, but by perseverance you will extricate yourself from your doubts and difficulties accordingly as you progress in your knowledge of law and practice. Your great aim should be to apply your knowledge as far as it extends, to the matter in hand. Your interest in each case that comes up for trial, must depend on how far you understand the exact questions in controversy. A practical acquaintance with the proceedings in the trial of civil or criminal cases cannot be acquired from reading ; you must study from real life how the great business of the administration of the law is conducted. A very important branch of English law is that which concerns the subject of Evidence. When you are studying the rules relating to this subject, you must endeavour to study how they are applied from time to time during the trial of a cause in open Court. When you are sufficiently advanced to properly appreciate the laws of Evidence, you will find the subject to be one of the most entertaining branches of

our Jurisprudence, and whether these rules concern procedure merely, or substantial law, they should be thoroughly mastered by every student who has ambition to become a lawyer. The onus of proof—the right of reply—the admissibility of a document—these may be small matters in themselves, but very often the loss or gain of a case may turn upon them. But over and above all things, the chief thing you should learn from the trial courts is the method of conducting a case. This involves principally the proper examination and cross examination of witnesses. You must possess or acquire a fair quantum of that desirable commodity popularly called “common sense”—and you must also study human nature. Common sense and human nature are just as essential as legal knowledge to the skilful examiner. Many a poor case is gained by the art of the advocate in presenting it. On the other hand, many a strong case is lost owing to bad management.



IX.

I have already warned you of the danger of always applying the rules of logic in reaching legal conclusions, but I think it incumbent on me to point out to you, in an especial manner, that there is no part of our law to which that caution can be more wholesomely applied than that portion which treats of the canons of interpretation of documents and statutes. These are called "Rules of Construction," and their object is to clear away any ambiguity that may appear on the face of an instrument or statute. Many attempts have been made by very learned writers to reduce the art of interpretation to an exact science by means of set maxims, doctrines and canons. But beyond exhibiting the ingenuity of their authors, these attempts have for the most part failed in achieving any practical fulfilment. The Rules of Construction have become so flexible and variable in the hands of modern English Judges, that it is almost impossible to state, in these days, their correct limits or application. The "Golden Rule of Construction" enjoins an interpretation *according to the plain meaning of words*, in the absence of clear indication to the contrary. Yet this rule has been so battered about and shaken up of late years, that I fear Baron Parke would not recognize it now if he were in the flesh.

Its reputation is shady—therefore do not make too familiar with it or you may get into trouble.

Let me illustrate. You would never suppose the word “money” could be said to be ambiguous. It would strike the vast majority of the unlearned that there is scarcely a word in the language more plain than this. “Money” is understood to mean actual cash or currency which passes from hand to hand. Well, suppose Mr. Jones wills the *money* of which he is possessed to Smith for life and afterwards to his children. What passes by the will? By applying the Golden Rule, you come to the conclusion that all Jones’ money goes over? My dear friend, you were never more mistaken in your life! If Jones owned leasehold estates, or household furniture and effects, these also would pass by the bequest which was made. A leasehold estate is not a thing that a man carries around with him as a medium of exchange; neither does a drawing room sett pass from hand to hand as currency, as a general rule; yet these things are “money” in the eye of the law for the purposes of Jones’ will.

Let me further illustrate. Suppose I let you a house on the agreement that you shall not use the same as a public house, tavern, or beershop; if you afterwards take a grocer’s license to sell beer to be drunk off the premises, you become thereby guilty of a breach of your contract. On the other hand, suppose I let you a house on the agreement that you shall not use the same as a public house, tavern or

beerhouse; if you afterwards take a grocer's license to sell beer to be drunk off the premises, you would not thereby become guilty of any breach whatever. Perhaps you don't quite see the line of demarcation? Well, it is just this: in the former case the governing word is *beershop*, and in the latter it is *beerhouse*. The light does not yet break in upon you? Really, I regret I cannot illuminate. Until you possess a "legal mind" of sufficient power to grasp the mighty distinction between Tweedledum and Tweedledee, you must remain in outer darkness.



X.

And if it can be truly said that the generally known Rules of Construction are uncertain guides in ascertaining the meaning of ordinary documents, it can also be correctly affirmed that they are still more unreliable when employed in the interpretation of the statute book. Take for instance the rule that "a statute which reforms the law should be so construed as to repress the former mischief and to advance the remedy." This seems quite lucid. But each Court and perhaps each Judge that interprets the new legislation may differ from the other, both as to the mischief that was and as to the remedy that is to be. So, here, this very plain canon of interpretation amounts to nothing in practice; or rather it is, in its result, somewhat like that one of toss up which a late eminent master of the Rolls used to call "the rule of thumb."

On questions of our constitutional law I would be glad to be able to say that I could refer you to some authoritative tribunal whence you would learn the general principles upon which the British North America Act is based. The Judicial Committee of the English Privy Council is our Court of ultimate resort, and you would therefore suppose that it was also the Court of best resort; but it is often far other-

wise. The great constitutional questions agitated in this country are generally questions as to the relative jurisdictions of the Federal Parliament and Local Legislatures under our great charter of confederation. But neither by applying the Rules of Construction, nor by using the elements of Whately or Locke, can you hope for enlightenment from the decisions of the judicial committee as to the general interpretation of the British North America Act. Say, for instance, this tribunal decides that a certain subject of legislation appertains to the Federal Parliament. Well, by the time you have this point well settled in your mind, you will be surprised with a later judicial expoundment by which the lawyers of the Privy Council affirm that in another *aspect* that same subject of legislation appertains to the Local Legislatures. And your beacon-light for the future will be some such practical rule as this: "Subjects which in one aspect belong to one jurisdiction may in another aspect belong to another jurisdiction."* So that, in the end, you will gain the important information that *the true solution of these vexed questions all depends upon the way they are looked at.*

*The rule seems rather indefinite, but even in the House of Lords now and then you will find the law laid down on rather wide lines. In a recent celebrated case involving the question as to a wife's power to pledge her husband's credit for articles of millinery supplied by a tradesman, the learned Lord Chancellor in the course of his judgment held that "the question, whether as a matter of fact, the husband has given authority to the wife, *must be examined upon the whole circumstances of the case.*" That proposition certainly was sound, but surely one need not go to the House of Lords to learn that a question of *fact* has to be decided upon the circumstances of the case.

Now, my young friend, I think I have shewn you the dangers to be guarded against. Let me give you one supreme canon of interpretation which you can substitute for all those which are in the books : *When called upon to construe any document or statute, just do the best you can to find the meaning, without the aid of any rules whatever.* By so doing you will probably hit bull's eye five times out of ten ; which is fair average shooting. Whereas if you try to steady your aim by means of any maxims or rules, the odds will be ten to one that you miss the target.



XI.

My dear Coke-upon-Littleton, when you have passed your final law examination do not forthwith imagine that you have a special mission to teach law to the Judges upon the Bench. Now and then, perhaps, the Judges may require to be enlightened by the Junior Bar upon the more abstruse branches of our jurisprudence, but as a general rule they do not need such assistance. Let me advise you to shew becoming deference to the Court at all times. When you happen to differ in opinion from the Judge do not be carried away with the notion that you must be right and the Judge must be wrong. The balance of probabilities, as between the Junior Bar and the Bench, is generally in favour of the Bench.

I cannot conclude my correspondence with you without making a few observations as to the conduct you should pursue in practising your profession. In the first place you must not forget that the duties of your position are exacting. *You are to manage all matters entrusted to your care with reasonable skill, and, therefore, you should make a rule of studying each case thoroughly to the extent of your abilities.* Unless you do so, you cannot hope for success.

Be faithful to your client in all things, and never let his confidence in you be misplaced. Identify your-

self with him, in every proceeding you follow in his behalf. *Keep your client's secrets with fidelity.*

Be always alive to the personal responsibility which is cast upon you by your membership in the great profession to which you belong. Many well minded men fall into a certain obtuse method of reasoning by which they argue themselves into the belief that a lawyer is a mere instrument to execute the will of his client, and is therefore without personal responsibility. This is a viciously false notion. In a certain sense the lawyer is an agent, but he is much more. He is the counsellor and friend of his client and is bound to advise him according to his own conscience, not according to the conscience of his client.

As a corollary of the above it follows that you are not justified in permitting any man to involve your good name in any professional dealings of which, if they were your own personal affairs, you would have reason to be ashamed.

Therefore, *beware of becoming the adviser or participator in fraudulent proceedings of any kind.* You will in the course of your practice be often beset with persons who desire to make fraudulent or colorable assignments or to give preferences against their property to the damage of their creditors. When you discover any such intention, you should at once decline the business.

The writer once became carelessly mixed up in a transaction which was impeached in Court, and were it not for his inexperience and also the fatherly indul-

gence of the eminent Judge who tried the case, your correspondent would, no doubt, have been reproved for conduct of which he had reason to be ashamed. I mention this circumstance that it may serve to impress my words upon your mind. Therefore, I repeat, *never counsel or assist your client in doing anything of which you would personally not approve.* Let this rule be inflexible.

In the next place, let me impress upon you that although you are a lawyer, *you should always discourage litigation except where it is necessary to protect your client's reasonable rights.* No honest lawyer should advise his client to go to law if this can be avoided by equitable terms from his opponent. *In all cases be ready to propose or accede to a fair settlement whenever the same be practicable.* Apply this rule especially in family disputes which above all others are at all times proper subjects of compromise.

Never allow any man to make use of you as a means of gratifying his malice against his neighbour. No doubt your legitimate duties will often require you to be exacting against your adversary, but you are never bound to protect your client's rights beyond reasonable bounds. Therefore, *if your client be inclined not merely to protect himself but to oppress his opponent, you should feel yourself bound to retire from his proceedings.*

In conclusion let me recommend to you, as a grand abridgment of all maxims of conduct, the golden rule

of Davy Crockett which, while it is of universal application, is specially appropriate as the motto of the lawyer :—" *Be sure you are right; then go ahead.*"

* * * * *

If you be studious, attentive, persevering, honorable towards your clients and faithful to yourself, you will achieve success. If you be otherwise, you will achieve otherwise.

Believe me, dear Coke-upon-Littleton,

Yours sincere friend,

JUNIUS JESSEL BURKE.

Beaconsfield Cliffe, February, A.D., 1887.



APPENDIX A.

As illustrations of what I may call incomprehensible law I think it well to instance the following :

I. If Brown owe Smith \$100, Smith cannot by any agreement (not under seal), contract in a binding manner to accept a lesser sum in satisfaction of the debt.

II. But if Smith agree to take Brown's note of hand or cheque for even \$1 for the debt, the giving of the same operates as a discharge of Brown's liability of \$100.

III. The same consequence follows if instead of paying cash, Brown gives Smith, and Smith accepts, a plug hat or a pipeful of tobacco in satisfaction of the debt.

IV. On the other hand, if instead of a note or cheque or specific article, Smith accepts \$99 in gold for his claim, Brown still remains undischarged as to the \$1 balance.

V. Yet Smith can legally make a gift of \$100 or any sum to Brown, but cannot agree by writing to discharge Brown's indebtedness to him or even to reduce it by \$1.

VI. If Smith, however, agree in writing to release Brown without his paying anything, and stick a wafer or piece of wax to that agreement, the release is good.

VII. If Brown's debt of \$100 fall due on Saturday, and Smith agree to take \$1 in full on Friday, Brown's payment on that day operates as a discharge; whereas if Brown do not happen to have the \$1 at hand on Friday, his payment of \$99 on Saturday, even though Smith accepts the same in full, would be no defence if Smith afterwards took the notion of proceeding for the odd dollar unpaid.

VIII. If Brown in addition to owing Smith the \$100, also happen to be indebted to Jones in another \$100; and if Smith and Jones mutually agree with Brown to accept \$10 each in full of their demands, Brown's payment thereof works a complete discharge of the whole \$200.

The above propositions are undoubted law. Every one of them, with the obvious exception of the sixth, is supposed to be a good corollary of the doctrine that a parol contract requires to be supported by consideration.

Mr. Pollock in his able treatise on the Law of Contracts points out very clearly how the above absurdities arose from applying the doctrine of consideration, not only to the *formation*, but also to the *discharge* of contracts. But Mr. Pollock himself carries the distinct learning of consideration too far in the following illustration. "The common proviso in

mortgages for the reduction of interest on punctual payment, *i.e.*, payment at the very time at which the mortgagor has covenanted to pay it—seems to be without any consideration, and *it is conceived that, if not under seal, such a proviso could not be enforced.*” But surely Mr. Pollock is clearly mistaken here. The proviso and the covenant being cotemporaneous and part of the one instrument, the lower rate of interest must be construed as the contract rate if punctually paid, and the higher rate as the contracted alternative rate in case of default. So that, even though not under seal, *such a proviso could be enforced as being supported by the common consideration of the mortgage.* And it is therefore not at all necessary to resort to Mr. Pollock’s expedient of fixing a time of pre-payment to maintain the validity of a parol proviso for reduction of interest when it forms part of the original mortgage transaction. Of course, it is quite obvious from the above illustrations, that such a proviso if made *after* the mortgage transaction would be open to the objection pointed out by Mr. Pollock.

The following authorities may be consulted in reference to the illustrations contained in the foregoing Letters and Appendix:—

Perrin *v.* Lyon, 9 East 170.

Davidson *v.* Kimpton, 18 Ch. D. 218.

London Land Co. *v.* Field, 16 Ch. D. 645.

Holt *v.* Collyer, 16 Ch. D. 718.

Cadogan v. Palagi, 25 Ch. D. 154.

Foakes v. Beer, 9 App. Cases 605.

Russell v. The Queen, 7 App. Cases 829.

Hodge v. The Queen, 9 App. Cases 117.

Debenham v. Mellon, 6 App. Cases, at p. 32.

Pollock on Contracts, 4th Edition, pp. 177-180.



APPENDIX B.

With the view of giving you an idea of the kind of law questions generally submitted to the students at Osgoode Hall, I furnish a complete set of the Examination Papers which were used during this term.

FIRST INTERMEDIATE EXAMINATION.

(*First paper*)—*Subject : Real property.*

1. Define *real* and *personal property* ; *corporeal* and *incorporeal* hereditaments ; *tenements*.

2. What words are necessary to be used in order to create an estate in fee simple (apart from recent legislation) ? And what to create an estate tail ?

3. How was a mortgage regarded in equity, and how at common law ?

4. What is meant by saying that there can be no use upon a use ?

5. What is necessary to entitle a widow to dower in legal estates, and what in equitable estates ?

6. What is meant by a term of years ?

7. Trustees are generally made joint tenants. Why ?

(*Second paper*)—*Subject : Smith's Common Law.*

1. Can a landlord distrain for rent after the expiration of the term of the lease ? If so, within what time, and under what circumstances ?

2. When a carrier has offered goods to the consignee, at the place to which they are consigned, and they have been refused, what is the position and responsibility of the carrier in regard to the goods ?

3. What children are *legitimate* ?

4. Define and distinguish *general lien* and *particular lien*.

5. If one man places windows in his dwelling house so as to overlook the adjoining yard belonging to another man, what means either legal or otherwise can the latter adopt to stop such invasion of his privacy ? Reasons.

6. When may a magistrate verbally command any person to apprehend another ?

7. What is the law as to the right of a master to maintain an action for damages against one who injures, or kills his servant ?

(*Third paper*)—*Subject : Equity.*

1. A lessee covenants in his lease to keep the demised premises in repair during the term of the lease, but without any fault on his part the property is destroyed by fire. Will he be liable upon his covenant ? Give reasons.

2. A. is the owner of a piece of land, and agrees to sell it to B. for a price named. From independent enquiries made before the time of the contract, B. believes there are 100 acres, while A. knows, and the fact is, that there are only 75 acres. After payment

of the purchase money B. discovers his error, and brings action to rescind the contract on the ground of mistake. What are the rights of the parties? Explain.

3. A testator bequeaths a fund to the children of A. in such proportion as A. shall appoint, but A. dies without having made any appointment. Will the children take any, and if so, what interest in the fund? Explain.

4. A trustee conveyed his trust estate to B. who wasted the estate: the *cestui que trust* brought his action against the original trustee to compel him to make good the loss, and the latter defended himself upon the ground that he had in good faith and for the sole purpose of freeing himself from the burthen of his trust, conveyed the said estate to B. who was a person in good standing and accepted the burthen of the trust, and that he, the original trustee, had in fact committed no waste. Who should succeed, and why?

5. A. is a druggist and sells out his business to B., and at the same time enters into a bond with B. with a penalty of \$1,000, conditioned that A. shall not carry on business as a druggist in the city of Toronto within six years. A. within the said period does commence business in Toronto as a druggist, and B. brings an action against him claiming an injunction. A. as a defence brings \$1,000 into Court by way of satisfaction of his bond, and claims that B. is not entitled to any further relief. What are the rights of the parties, and why?

6. "A trustee for sale cannot become the purchaser." Explain this proposition by an example, and state the effect of a purchase by such a trustee.

7. Illustrate by an example the jurisdiction of equity to relieve against penalties, and, by another example, its jurisdiction to relieve against forfeiture.

(*Fourth paper*)—*Subjects : Anson on Contracts—
Statutes.*

1. "Contract results from a combination of the two ideas of agreement and obligation." Explain this statement.

2. What are the requirements for the acceptance of an offer ?

3. What are the limits to the capacity to contract of a corporation ?

4. What is meant by *negotiability* ? What are its essential requisites ?

5. What statutory provision as to consideration for guarantees ?

6. What effect has a promise made after full age to pay a debt contracted during infancy ?

7. Plaintiff sues upon a lost promissory note. Defendant sets up the loss of the note as a defence. How can the plaintiff successfully meet the defence, assuming that the note cannot be found ?

FIRST INTERMEDIATE EXAMINATION.—PAPERS FOR
HONORS.

(*First paper*)—*Subject: Real property.*

1. State some of the acts and circumstances which will revoke a will, apart from revocation by a later will.

2. What form of words (if any) is necessary for creating, and what for transferring an equitable estate? Explain fully.

3. Will a writ of execution bind an equitable estate? Explain.

4. Explain shortly the operation of the conveyance by Lease and Release, before and after the Statute of Uses.

5. What is the meaning of the word *seised* in the Statute of Victoria respecting descent?

6. After maturity of a mortgage, upon what terms can the mortgagor pay it off? Why?

7. A. makes a conveyance with covenants for title to A. and B. Can the covenants be enforced? Why?

(*Second paper*)—*Subject: Smith's Common Law.*

1. What is the law as to *contribution* among two or more joint wrongdoers?

2. Explain the meaning and effect of *privileged communication* in an action of slander.

3. Is *hearsay evidence* ever admissible in any action for malicious prosecution ; if so, in what way ?

4. Explain briefly the common law doctrine as to the liability of the owner of cattle for trespasses committed by such cattle upon the land of others ; and what effect has the question of *fences* upon such liability ?

5. What is the Common Law as to the liability of a master for an injury to his servant, from the negligence of a fellow-servant ; and what is the reason of it ?

6. When goods have been lost or destroyed, while being conveyed by a railway company, ought the action against the company, as a general rule, be brought by the consignor or the consignee ?

7. What is the difference between an executor and an administrator, as regards their power to act before probate, and grant of administration respectively ; and what is the reason of the difference ?

(*Third paper*)—*Subject : Equity.*

1. When will equity grant relief by way of supporting the defective execution of a power ?

2. The owner of goods places them in the hands of an auctioneer for sale. The latter secretly procures a friend to buy them in for him at the sale. The owner then discovers the fact. What remedies has he, if any ?

3. A testator devised the revenues arising from certain lands to trustees for certain specified objects of charity. These revenues so increased that they were more than sufficient for the specified objects ; the testator's heir at law brought action against the trustees to recover the surplus revenues. What were the rights of the parties ? Explain fully.

4. A testator by his will devised his real estate to A., a stranger, in trust, but did not specify any trust upon which it should be held. In whom did the beneficial interest in the estate vest, and why ?

5. A vendor of land before conveyance received a notice from a third person that he had procured an assignment of the purchaser's interest in the contract, and a request that the vendor convey directly to such third person. The vendor disregarded the notice and conveyed to the original purchaser. What are the rights of the parties to the transaction, and why ?

6. " In general in assignments of equitable interests other than equitable estates, he who gives formal notice to the holder of the fund has priority over him who does not." Illustrate this passage by an example.

7. Where the surplus produce on the execution of a power of sale in a mortgage in fee is directed to be paid to the mortgagor, his executors, &c. What effect has a sale under the power in working a conversion of the realty into personalty ?

(Fourth paper)—*Subjects : Anson on Contracts—
Statutes.*

1. "Most systems of law require evidence of the intention of the parties to create an obligation." In English law how is this evidence supplied ?

2. A. promises B., for valuable consideration, that he will be answerable for the debt of C. A written memorandum is drawn up thus—"I agree that I will be answerable for C.'s debt." This is signed by A. What objections are there to the document in case B. wishes to make A. liable on it ?

3. A. in Toronto by letter offers B. in Liverpool 50 base burner stoves at \$40 each, and asks for an answer by cable. The letter reaches Liverpool and B. cables an acceptance. Before the receipt of B.'s answer A. has written withdrawing the offer. What are the rights of the parties ? Give reasons.

4. A. agrees with B. to buy a car of lumber, now on its way to Toronto by C. P. R. from Algoma Mills. It is subsequently found that the lumber in question had been burned before the making of the agreement. What are B.'s rights against A., if any ? Give reasons.

5. How far are agreements in restraint of trade valid ?

6. What is the effect of taking a negotiable instrument in payment of a claim ?

7. A. owes B. \$200. B. draws on A. for the amount at three months. The bill is presented to A. A. thereupon writes B. a letter informing him that he accepts the bill. B. gets back the bill and endorses it to C. and hands over at the same time A.'s letter. The bill is not paid when due. C. sues on the bill. What defence has A. ?

SECOND INTERMEDIATE EXAMINATION.

(*First paper*)—*Subject : Real property.*

1. A deed after delivery, but before registration, is destroyed with the mutual consent of grantor and grantee. What is the effect ?

2. In what securities may trustees invest the trust money where no direction is given in the instrument creating the trust ?

3. Can a mortgagee purchase the mortgaged land at a sale under the power in his mortgage ? Why ?

4. What is meant by an attornment clause in a mortgage, and what is its effect ?

5. In a foreclosure action how many years arrears of interest may be claimed ? Why ?

6. A mortgagor dies intestate. The mortgaged land is sold and a surplus is realized. The widow barred

her dower in the mortgage. Is she entitled to dower? If so, how is it to be computed, leaving out of consideration her expectation of life?

7. What is meant by title by occupancy? What is a special occupant?

(*Second paper*)—*Subjects: Broom's Common Law, and O'Sullivan's Manual of Government.*

1. A. is in peaceable, though wrongful possession of B.'s land. B. enters upon the land. Which of the two is the trespasser, and why?

2. Illustrate by example what is meant by damages being *too remote* to be recoverable in an action of tort?

3. On the trial of an action of malicious prosecution, what are the respective functions of judge, and jury, as to the questions of *malice*, and *reasonable and probable cause*?

4. Illustrate by example the difference between an *intention* to commit a crime, and an *attempt* to do so; and explain the difference between them as to criminal liability.

5. In what case is an infant liable to an action for tort?

6. Explain *malice in fact*, and *malice in law*.

7. What is the name of the English tribunal which is the Court of last resort for litigants in this Province?

(Third paper)—Subject: *Equity*.

1. A. holds certain stock in trust for B. who, for value, assigns his interest therein to C., who gives no notice of the assignment. B., afterwards, again assigns the same stock to D., a purchaser for value, without notice of the prior assignment, who gives notice of his assignment to C.; and still later B. again assigns the same stock to E., a purchaser for value, without notice of any of the prior assignments, who gives notice of his assignment to A. Upon this state of facts who is entitled to the beneficial interest in the stock, and why?

2. A. enters into a voluntary bond whereby he binds himself to convey certain lands to B., or his assigns. The latter assigns the bond to C., who is a *bona fide* purchaser thereof, for value, without notice of any want of consideration for the original instrument. C. brings action on the bond for specific performance thereof, and A. defends upon the ground of want of consideration. What are the rights of the parties, and why?

3. What exception is there to the general rule that a trustee shall not be allowed to delegate his trust?

4. A mortgagee forecloses his mortgage security. Can he thereafter in any, and if so, in what case, maintain a personal action against the mortgagor upon his covenant in the mortgage, and what would be the effect of his so doing?

5. A. has a mortgage upon properties Y. and Z., and B. has a subsequent mortgage from the same mortgagor upon property Z. only, which latter property is insufficient to satisfy both mortgages. A. gives B. notice of his intention to sell Z. property under a power of sale in his mortgage. Has B. any, and if so, what equitable remedy for the protection of his interests? Give reasons.

6. Illustrate by an example the jurisdiction of equity to decree the cancellation of a voidable instrument.

7. "*Ignorantia legis neminem excusat.*" Explain the meaning of this maxim, and illustrate it by an example.

(Fourth paper)—Subjects: *Mercantile Law—The Judicature Act—Statutes.*

1. A. loses his watch, B. finds it and keeps it. C. wrongfully takes it from B. Can B. recover it from C. by action at law? If so, by what right and in what form of action?

2. What modes of alienation of chattels personal?

3. Distinguish a *good* consideration from a *valuable* consideration.

4. In what cases may a commission be granted to take the evidence of witnesses in an action? How is it obtained? What is its effect on the bringing of the action to trial?

5. A. is executor of B.'s will. C. owes B.'s estate \$1,000. A. accepts \$500 in full of the claim. How far is A. liable to B.'s estate for the deficiency?

6. A covenant is made by A. in favor of B., C., and D.; B. and C. die. Who can then sue on the covenant? Why?

7. How may a judgment (a) for the recovery of land (b) for the recovery of any property other than land or money be enforced?

SECOND INTERMEDIATE EXAMINATION—PAPERS FOR
HONORS.

(*First paper*)—*Subject: Real property.*

1. State accurately and shortly the method of barring an entail.

2. Explain what is meant by saying that powers cannot be engrafted on a bargain and sale.

3. What is a shifting use? Give an example.

4. What is a wife's *equity to a settlement*? How is it affected by Ontario Statutes?

5. A mortgage is made to A. and B., and A. dies intestate before maturity. At maturity payment is made to B., and a discharge demanded from him. Is the payment to B. sufficient, and will his discharge alone suffice? Explain fully.

6. What covenants are said to "run with the land," and what not? Explain fully.

7. What is meant by saying that an exception must not be repugnant to the grant? Give illustrations by examples.

(*Second paper*)—*Subjects: Broom's Common Law, and O'Sullivan's Government in Canada.*

1. Into what three great classes are *bailments* subdivided; and what is the responsibility of the bailee in each class?

2. Can a purchaser of goods, which remain in the vendor's possession, subject to his lien for unpaid purchase money, maintain an action against a third person for a tortious removal of the goods? Reasons.

3. What is the main distinction between the liability of a magistrate, who acts without jurisdiction, and the liability of a magistrate, who acts erroneously within his jurisdiction?

4. Explain the distinction between *larceny by a servant*, and *embezzlement*.

5. What important change was effected in the mode of trial of a criminal charge of libel, by Mr. Fox's celebrated Libel Act?

6. Write brief notes on the doctrine of *contributory negligence*.

7. In which branch of the Parliament of Canada must bills of different kinds originate respectively?

(Third paper)—Subject: *Equity*.

1. State in what respects charities are favoured in the law above individuals, and in what respect they are disfavoured as compared with individuals.

2. Discuss the question of the liability of trustees and executors respectively for the defaults of their Co-trustees and Co-executors, and the effect upon them respectively of joining in receipts for conformity.

3. A settlor by deed conveys land upon trust to pay the rents and profits to the settlor during his lifetime, and after his death to sell the same, and divide the proceeds equally between A. and B., if then living. A. predeceases the settlor. Who takes the property, and in what character does he take it, *i.e.* whether as realty or personalty? Give reasons for answer.

4. Give a general statement of the law with regard to an executor's right to a retainer, and give the supposed ground or origin of that right.

5. The day named in the mortgage for the payment of the principal money has gone by. What are the respective rights of mortgagor and mortgagee as to the time when payment may be made, and as to the time up to which interest must be paid?

6. What defects in the execution of a power will equity aid? Illustrate by an example.

7. "While recognising the rule of law, and even founding upon it and maintaining it, a Court of Equity will, in a proper case, get round about, avoid, or obviate it. Illustrate this passage by an example.

(*Fourth paper*)—*Subjects : Mercantile Law—Judicature Act.*

1. "There is no action in the law of England by which the property either in goods or lands is alone decided." Explain this statement.

2. On a sale of goods how far is a warranty implied ?

3. A. insures his life in favor of B. to secure A.'s indebtedness to B. The debt is discharged. A. dies. B. sues the insurance company on the policy. How far is the payment by A. of his debt to B., an answer to the action against the company ? Explain.

4. Distinguish *legal* from *equitable* choses in action. State the rights of the husband as they existed prior to the last Married Women's Act, with respect to equitable choses in action.

5. Personal property held by A. and B. as trustees, it is desired to appoint C. as trustee in the stead of B. who retires. How is this done ? Draft the document.

6. A. and B. make a joint and several promissory note to C. Within six years from the making of the note, A. writes to B. asking him to settle the note. C. sues A. and relies upon this letter as taking the note out of the Statute of Limitations. How far can he succeed ?

7. When is a legacy in the hands of an executor attachable ?

EXAMINATION FOR SOLICITOR.

(First paper)—Subject: Real Property and Wills.

1. What are the four cardinal general rules for the construction of wills?

2. A devise to A. and his children, A. having no children at the time of the devise. What interest does A. take?

3. A devise on bequest to the children of A. and B. as tenants in common. How do they take?

4. State the nature of a mechanic's lien, how it arises, and how it is preserved against land.

5. What is the rule as to computation of interest on an over-due mortgage, when no provision as to the rate after maturity is made by the instrument? Does the form of action make any difference in the mode or rate of computation?

6. What is the object of registering a deed or mortgage? Explain fully.

7. A vendor dies intestate. The purchaser desires to have the contract specifically performed. How would you proceed, and what parties would you make? Explain fully.

8. What was, and what is now the rule as to a mortgagor's right to inspect the title deeds?

9. When a trustee dies, and no provision is made by the trust deed for appointing a new trustee, can one be appointed without applying to the Court ; if so, how ?

10. Has an administrator any, and what power over the real estate of the intestate ?

(*Second paper*)—*Subjects : Smith on Contracts, and Benjamin on Sales.*

1. What is the difference, in point of validity, between a *promise* by a man to a woman to make her an allowance for maintenance in consideration of past seduction, and a *bond* to the same effect, and upon the same consideration ; and what is the reason of the difference ?

2. Is it necessary to the validity of an agreement to pay a person an annuity for his life, that it should be in writing ? Reasons.

3. What is the law as to the right of an undisclosed principal to sue upon a simple contract made in the name of his agent ?

4. Mention the kind of contract that must be founded on a consideration in order to be good, even though made by deed.

5. Is it the *payment* of the price, or the promise to pay the price, that forms in general the consideration for the sale of goods ? Give reasons for your answer.

6. In a sale of goods by *description* where the buyer has not inspected them, what *condition precedent*, and what *warranty* does the law imply ?

7. What is the law as to the effect of a delivery by the vendor to the vendee of part of the goods sold upon the vendor's lien on the remainder not delivered ?

8. How is the vendor's right of *stoppage in transitu* affected (1) by a delivery of the goods by the carrier to the vendee before their arrival at their destination ; and (2) by a wrongful refusal by the carrier to deliver the goods to the vendee, on his demand, after their arrival at their destination ?

9. A. buys goods in B.'s shop, with the fraudulent intention of not paying for them. They are handed to him over the counter by B. in the expectation of immediately receiving the price. A. leaves the shop, hurriedly, without paying and before B. has time to take any steps in the matter, A. sells and delivers the goods to C., an innocent purchaser for value who pays A. for them. Can B. maintain any action against C. in respect of the goods, and if so, what and why ?

10. A vessel owner, in November, agrees with a merchant to take his vessel to Kingston harbor, and to take on board there a cargo of barley, and carry it to the port of Oswego within one month. Before the vessel can be taken to Kingston, the harbor freezes up, so that the contract cannot be performed until spring. Is the owner liable for breach of contract ?
Reasons.

(Third paper)—Subject : *Equity*.

1. A testator directs his solicitor to so draw his will that his son shall take a life estate in certain lands. The solicitor draws it so that the son takes the estate for a term of years. The will is thus executed, and the mistake not discovered until after the testator's death. The son seeks as against the person entitled in remainder to reform the will. What are the rights of the parties? Give reasons.

2. A broker owns certain stock which he desires to sell. B. is seeking an investment. The broker recommends this stock, saying that he holds it for a customer. B. relies upon the statement, and purchases, although he would not have purchased had he supposed that the stock belonged to the broker. B. afterwards discovers the true state of facts, and brings action to set aside the contract. What are the rights of the parties? Give reasons.

3. An infant mortgages his lands for money advanced upon the security thereof, and upon being asked during the course of the transaction, he knowing the same to be untrue, states that he has arrived at his majority. An action is subsequently brought to foreclose the mortgage, and he depends on the ground that the mortgage is invalid by reason of his infancy. Who should succeed in the action, and why?

4. A testator bequeaths his household furniture to his widow upon condition that she shall never marry

again, and in the event of her marrying again it is to go to her servant. Is the condition a valid one? Give reasons.

5. Two persons are endorsers upon a promissory note for the accommodation of the maker. The endorser whose name stands first upon the note is compelled to pay the same, and he then brings an action against the second endorser to recover one half of the amount so paid by him. Should he succeed in the action, and why?

6. Why is it that part payment of purchase money, is not deemed by Courts of Equity to be such part performance of a contract for sale of land as will take the case out of the operation of the Statute of Frauds?

7. Has a purchaser of land who has paid a portion of his purchase money, any, and, if so, what security for his money beyond his personal remedy against the vendor where the latter refuses to carry out the sale? Explain fully.

8. A testator dies leaving general and specific legacies. In the absence of any provisions in the will affecting the question, from what time will interest be payable to the legatees?

9. Can an action for specific performance be maintained by a purchaser of land against the vendor thereof, where the contract is signed by the vendor only? Give reasons for your answer.

10. Explain how it was that the Statute of Uses failed to accomplish the purpose for which it was passed?

(Fourth paper)—Subjects: Mercantile Law—Statutes.

1. A. is in a position to prove bribery against B., a candidate elected to Parliament. In consideration of A.'s not prosecuting B., the latter makes a deed of a house and lot to A. B. subsequently seeks to have the deed cancelled. On what ground (if any) can he claim to have it set aside?

2. A charter party dated the 1st June contains a covenant that a schooner shall proceed from Cobourg to Charlotte on or before the 10th June, to take a load of coal. Charter party was not executed until the 11th June, and the vessel sailed on the 15th June. How far will the owner be liable in action for the breach of contract by reason of the delay? Why?

3. A. of Toronto being in London asks his English correspondent B., to procure from C. at Liverpool certain bales of fine cloths, and ship along with certain goods bought by A. from B. himself. B. does so, and sends an invoice to A. which includes the goods bought from C. as well as those bought from B. In consequence of defective packing the cloths are spoiled. A. sues B. for the damage. How far can he make him liable? Why?

4. A. is a tenant under lease with four years unexpired. B. is his landlord. B. agrees to expend \$250 in improvements on the premises if A. will pay \$50 per annum more rent. A. agrees verbally, and B. expends the \$250 as agreed. A. refuses to pay the extra rent, and sets up as a defence that the agreement was not written, but verbal. How far is the defence good? Why?

5. Explain the difference between *executed* and *executory* considerations.

6. What is the difference between a *factor* and a *broker*? How far does the difference between them affect the rights of third parties against the principal?

7. A. plaintiff, B. defendant. B. has claim for indemnity against C. How far can he have it disposed of in A.'s action? State what must be done by B. in order to get his claim against C. into question in the action? What step must then be taken by A.?

8. When are the pleadings in an action deemed to be closed?

9. What are the consequences of disobeying an order for discovery?

10. A plaintiff specially indorses a writ of summons. Defendant appears and demands a statement of claim. What steps may the plaintiff take equivalent to serving a statement of claim? Draw what is necessary for the purpose in an action between A. and B.

EXAMINATION FOR CALL TO THE BAR.

(First paper)—Subjects: *Real Property and Wills.*

1. Is it necessary to abstract discharged mortgages and expired leases in preparing an abstract? Why?

2. In proving title between vendor and purchaser, what is sufficient evidence of discharged mortgages where they cannot be produced by the vendor? Explain fully.

3. (i.) A purchaser, after payment of his purchase money, and after delivery of his deed, but before registration, gets actual notice of a prior deed. Is he affected by it? (ii.) After registration, but before payment of the purchase money, a purchaser get actual notice of a prior deed. Can he safely pay his purchase money? Explain fully in both answers.

4. What are the provisions of the Conveyancing Act, 1886, as to limitations in a conveyance?

5. State some of the modes in which a purchaser may waive his right to have a good title proved.

6. Give instances of devises for life, with remainders to heirs, to which the rule in Shelley's Case does not apply.

7. What is the effect of the devolution of Estates Act, 1886, upon a specific devise of real estate?

8. How can you prove a registered deed less than thirty years old without calling a witness ?

9. Under what circumstances are copies of registered deeds certified by a registrar admissible in evidence ?

10. What is the effect of the usual recital in the body of a conveyance that the purchase money has been paid ? Does it make any difference if the conveyance is registered ? Why ?

(*Second paper*)—*Subjects: Harris on Criminal Law ; Broom, (Books 3 & 4.)—Blackstone, (Vol. 1.)*

1. If, on the trial of a prisoner, for obtaining goods by *false pretences*, the evidence proves that the offence was *larceny*, what verdict may the jury give ?

2. What is the difference between *treason* and other crimes, as regards the element of *design* ?

3. Define and distinguish the crimes of *escape*, *prison-breach*, and *rescue*.

4. If an indictment contains one count for a *felony*, and another count for a *misdemeanour*, is it open to any objection on that ground ? If so, how, and when, may the objection be raised ?

5. Give three examples of *killing by correction* ; one which amounts to *murder*, another which amounts to *manslaughter*, and a third which amounts to *excusable homicide*.

6. On a trial for murder, when the homicide has been proved, does the *onus* lie on the Crown to prove the *malice*, which is necessary to make it felonious, or on the prisoner to disprove it ?

7. A testator employs a solicitor to draw, and have properly executed, his will by which he bequeaths a legacy of \$10,000 to A. By the gross negligence of the solicitor the will is not properly attested, and is therefore void. Can A. recover damages against the solicitor for the loss of his legacy ? Reasons.

8. What is the law as to the admissibility on the trial of an action of libel, of evidence of other libels published by the defendant of the plaintiff besides the one in question in the action ?

9. What is the difference between *nonfeasance* and *misfeasance* of a gratuitous service as regards the liability of the party undertaking it ?

10. Explain the meaning of *treasure trove*, and state briefly when it belongs to the Crown, and when to an individual.

(*Third paper*)—*Subject : Equity.*

1. A. makes a contract in writing with B. for the purchase of a house. Just before the contract was entered into the house was destroyed by fire, which fact was not known to either of the parties to the contract. Would those facts afford a sufficient answer to an action by the vendor for specific performance of the contract ? Explain.

2. A debtor assigns certain of his chattels to a trustee for payment of creditors generally, and assigns certain other of his chattels to a particular creditor to secure a past indebtedness due to that creditor. What right, if any, has the debtor as to revocation of these assignments?

3. State the general rules with regard to the disability of a trustee to purchase from his *cestui que trust*.

4. A. leases a house to B. who sub-leases it to C., whereupon B. becomes bankrupt. Will equity afford A. any, and if so, what remedy for the recovery of his rent?

5. What are the functions of a Receiver? When will the Court appoint one? Illustrate your answer by two examples.

6. Speaking of specific performance, it is said that "Courts of equity will let in the defendant to defend himself by evidence to resist a decree where the plaintiff would not always be permitted to establish his case by like evidence." Illustrate this passage by an example.

7. Lands are devised under the will of A. to B. in trust to raise money on the security thereof, for the purpose of complying with certain directions in the will. B., in pursuance of the provisions of the will, mortgages the said lands by an instrument in which he is described as trustee under the will of A., and

in which he enters into the ordinary mortgage covenants as contained in the Short Forms Act. Default having been made in payment, the mortgagee seeks to recover payment of the mortgage money from B., personally. B. defends on the ground that by his covenant he intended to bind, and did bind the trust estate only. Who should succeed, and why?

8. The estate of a testator is sufficient to satisfy both debts and legacies, and the executor pays all the debts and all the legacies except one. All the legatees are entitled to rank *pari passu*. Subsequently the executor wastes all the balance of the estate; thereupon the unsatisfied legatee seeks to procure repayment by the other legatees of such ratable proportion as will enable him to share equally with them. What are the rights of the parties? Give reasons.

9. According to the life tables, A. has an expectation of living ten years, and upon this basis he purchases for \$10,000 from a life assurance company an annuity to be paid to him during the remainder of his life; on the following day he is run over by a railway train and killed. Can his representatives obtain any, and if so, what relief against the assurance company? Explain fully.

10. It is apparent on the face of an award that the arbitrators understood the law applicable to the question, but that they designedly found contrary to the law. The arbitrators acted in good faith, and accord-

ing to what they deemed the substantial justice of the case. Is the award good or bad? Explain.

(*Fourth paper*)—*Subjects : Mercantile Law—Contracts—Evidence.*

1. A. being the owner of a matched pair of bay mares offers to sell the pair to B. for \$2,000, and gives him until twelve o'clock of the next day to accept. C. comes in the same day and offers \$2,400, which A. accepts. B. hearing of C.'s dealings comes before twelve o'clock the next day, and tenders to A. \$2,000, and claims the pair. A. says they are sold to C. What remedy has B? Why?

2. A. has a liquidated demand against B. which is barred by the Statute of Limitations. He holds as security an assignment of A.'s interest in a property which accrues after the expiration of the six years. B. calls upon A. for a release of this assignment on the ground that A. has lost his rights. How far can B. succeed? Why?

3. What is the rule as stated by Pollock as to the effect of a contract made by a man when drunk?

4. How far is acceptance necessary to a promise made by deed?

5. What proceedings can judgment creditors take to obtain information on oath as to the financial position of the judgment debtor?

6. How far does part performance of an obligation extinguish such obligation ?

7. A., on the 10th October, 1886, makes a general assignment to C. for the benefit of creditors. On the 5th October, previously, B. had obtained judgment against A., and on the same day had placed writs of execution in the sheriff's hands. The sheriff seizes the defendant's goods on the 9th of October. C. claims them. Who holds then priority ? Why ?

8. A. plaintiff, and B. defendant. Action to be tried without a jury. Both parties give notice of trial : A. for the Chancery Sittings ; B. for the Assizes. Where must the trial take place ?

9. What powers has the Judge in a case where at the trial a witness after being excluded returns to the Court without leave ?

10. Distinguish a *special* from a *general* verdict.

EXAMINATION FOR "CALL WITH HONORS."

(*First Paper*)—*Subjects : Real Property and Wills.*

1. Can an equity of redemption be sold under a writ of *fiери facias* ? If so, under what circumstances ? and what is the position of the purchaser ?

2. A purchaser gives a mortgage for unpaid purchase money to the vendor on the land bought. He then discovers that there are arrears of taxes, which accrued before the vendor bought, and pays them and notifies the vendor and requests repayment. The vendor, without recouping the purchaser, assigns the mortgage to an assignee without notice. The purchaser then discovers a mortgage made by the vendor, which the holder is proceeding to enforce against him; and at the same time the assignee of the purchaser's mortgage proceeds to enforce it against him. The purchaser's conveyance was in the short form under the Act. What are his rights and liabilities with respect to the vendor, the assignee of the mortgage, and the incumbrances?

3. A purchaser, after paying his purchase money, on going to register his conveyance, finds registered a conveyance of the same land from the owner to his son expressed to be in consideration of natural love and affection. It is dated after the purchaser's conveyance. Does the purchaser get a good title? Explain fully.

4. A bequest is made by a testator of all his personalty to his two brothers A. and B., and their children share and share alike. A. has children. B. has none. How is the property to be distributed, and what interest do the legatees take?

5. A. agrees to sell to B. a farm which he says contains 100 acres at \$100 an acre. B. walks over the

land both before and after the agreement is signed. The title being approved, the contract is completed by a conveyance describing the lands as lot No. 10, containing 100 acres more or less. The consideration expressed is \$10,000, of which \$5,000 is paid and \$5,000 secured by mortgage of the land. Subsequently B. discovers that there are only 95 acres in the lot. Has he any right to compensation? If not, what remedy has he? Explain fully.

6. A. sells land to B., which he represents to be free from incumbrances, alleging that a registered mortgage to C. is in reality paid off. B. accepts the statement as true. C. is a witness to the conveyance from A. to B., which contains a covenant that the land is unincumbered. Afterwards C. brings an action on his mortgage against B., who then discovers that A. had misled him. Is C. estopped from saying that his mortgage is unpaid? Why?

7. (1) Pending a contract for the purchase of land, the buildings on the land are burned. There is no insurance. Who bears the loss? (2) A bidder at a judicial sale pays a deposit to the vendor's solicitor who pays it into court. The buildings on the land are burned down. There is no insurance. The Master reports that the bidder is the purchaser. A motion is then made to compel him to pay the balance of his purchase money into court, while the purchaser makes a cross motion for a vesting order, and to be relieved of further payment, the land without the buildings

being admittedly worth only the deposit. Which motion will succeed? Why?

8. A. is a bidder at a judicial sale, is declared the highest bidder and the purchaser, and signs the contract. Before the report on sale is made he assigns all his benefit under the contract to X. for \$1,000. X. applies to be substituted for A., and offers to pay into Court the amount which A. bid. Is he entitled to this? Why?

9. (1) A devise to A. in trust to permit B. to receive the rents, issues, and profits for his lifetime. (2) A devise to A. in trust to pay B. the rents, issues, and profits for his lifetime. Is there any, and what difference?

10. In drawing a will whereby real property is to be devised to a married woman so that she may enjoy it for her separate use, what words are necessary in order to effect this result? Why?

(Second Paper)—Subjects: Mercantile Law, Contracts and Evidence.

1. Illustrate the difference in result between taking a worthless bank note for goods sold and taking a worthless bank note where there is a precedent debt.

2. An action on a promissory note is commenced in sufficient time to prevent the action being barred by the Statute of Limitations, then the plaintiff dies and

the period of limitation has expired. What effect? What effect where defendant dies under like circumstances? Has this question been affected, and if so, how, by modern legislation?

3. A. now lives in Ontario. He is sued here upon a bill accepted by him in England, but payable in Glasgow. He defends and pleads a discharge in bankruptcy obtained by him in Scotland. How far is that defence good? Explain the principle of your answer.

4. A.'s life is insured for the benefit of B. The premium becomes due but is not paid. The company waive proof of A.'s health and accept the premium. It is discovered that A. has died in the meantime, both B. and company being ignorant of the fact when the premium was accepted. Is the company liable? Reason for your answer.

5. A pawnbroker lends money on a pledge without complying with the requirements of the Pawnbrokers' Act. What is the effect? On what principle does it depend?

6. A Railway Company crosses a man's farm. They take his land and pay him compensation for the land and put up farm crossings. Some years after the crossings having got out of repair the farmer requests the Company to repair the crossings. They refuse. Can he compel them to do so? Authority.

7. A witness in answer to a question by counsel, repeats certain statements as spoken by the defendant of the plaintiffs. Counsel desires to shew that these statements meant really more than their apparent meaning; he asks witness, "What did you understand by that statement?" Objected to. Give your ruling with reason, and if wrong, state the proper questions to be put.

8. What is the rule as to what damages are recoverable in actions on contract as opposed to damages in actions of tort, and what exception to that rule?

9. An auctioneer enters a memorandum of sale sufficient in form in his book and signs it. He then in his own name sues the purchaser. Can he succeed in the action so commenced? Reason for your answer.

10. When can an action be brought by a common informer for a penalty imposed by a Statute? What is requisite before compounding such an action?

(*Third Paper*)—*Subjects: Harris on Criminal Law; Broom's Common Law (Books 3 and 4); and Blackstone (Vol. 1).*

1. What is the general rule as to the *burden of proof* on a criminal trial; and what qualifications are there of such rule?

2. If a man break into a dwelling house at night without any intent of committing a crime therein. What is the legal character of his act?

3. On a trial for murder is it a good defence : (a) that the deceased was in ill health, and likely to die when the wound was given : (b) that the immediate cause of death was the refusal of the party to submit to an operation : (c) that the immediate cause of death was an improper application to the wound, and not the wound itself ?

4. Two persons conspire to commit a felony, and actually commit it. They are then tried for the conspiracy, and afterwards for the felony. Can they be convicted on both or either of such trials ?

5. In what cases is it necessary for the Crown to call more than one witness to prove a criminal charge ?

6. Define and distinguish *champerty* and *maintenance*.

7. Explain the doctrine of *estoppel in pais*.

8. Write brief notes on the question of *consequential* damages in an action of tort.

9. Mention the different kinds of *bailment*, and state the liability of the bailee in each kind.

10. Explain the meaning and effect of the maxim "*Nullum tempus occurrit regi.*"

(*Fourth Paper*)—Subject: *Equity*.

7. Apart from statutory enactment is there any, and if so, what distinction between the liability of a purchaser of land from a trustee under a will, to see

to the application of the purchase money, where the trust is for the payment of debts generally, and his liability therefor when the trust is for payment of specified debts only?

2. A. having by separate instruments mortgaged all his real and personal property, respectively, in fee, dies intestate and without heirs or personal representatives. In whom does the equity of redemption of each respective property vest, and why?

3. Real estate is by a settlement vested in trustees for the sole and separate use of a married woman, free from the control of her present or any future husband with restraint or anticipation. Her husband dies and she and the trustees make sale of the property, after which she marries again and his children, who after her death seek by action to set aside the sale as being made in contravention of the restraint on anticipation. Is the action well founded? Give reasons.

4. What is the equitable doctrine of subrogation? Give an example.

5. Has the fusion of law and equity had any, and if so, what effect upon the defence of purchase for value without notice? Answer fully with reasons.

6. Where an action for specific performance is brought by an infant, the plaintiff will fail by reason of the want of mutuality of obligation, but where A. and B. enter into a contract for the sale of lands, which contract is reduced to writing and signed by

A. only, a similar defence is not open to A. in an action for specific performance brought against him by B. Explain this apparent anomaly.

7. The personal estate of a testator is exhausted in the payment of his simple contract creditors. He has bequeathed a legacy to his servant of \$1,000, but he has not charged the same upon his real estate, which is amply sufficient to satisfy the same. One-half of his real estate he has devised to his nephew, and the other half not being included in the will descends to his son. Has the legatee any right to such payment out of the real estate? Discuss the principles upon which your answer depends.

8. What is equitable execution? What is the nature of the relief obtainable by virtue thereof, and by what process is that relief usually worked out?

9. Will equity specifically enforce an agreement between two persons to submit their dispute to arbitration? Why? Will it specifically enforce an agreement between two arbitrators to make an award? Why? Will it enforce specific performance of an award directing one of the parties to convey land to the other? Why?

10. The Statute of Frauds excepts from its operation trusts arising or resulting from any conveyance of lands or tenements by implication of law. Illustrate this exception by an example.

* * * The above papers for "Call with Honors" were used at the preceding Michaelmas Examinations.

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